



INTERIOR BOARD OF INDIAN APPEALS

Gloria Davis Lunday v. Aberdeen Area Director, Bureau of Indian Affairs

34 IBIA 138 (10/13/1999)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GLORIA DAVIS LUNDAY,
Appellant

v.

ABERDEEN AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Vacating Decision and Remanding
: Case
:
:
: Docket No. IBIA 99-84-A
:
:
: October 13, 1999

Appellant Gloria Davis Lunday seeks review of a June 9, 1999, letter from the Aberdeen Area Director, Bureau of Indian Affairs (Area Director), informing Appellant that a gift deed between Appellant and Mary Emma Bruce had been rescinded. For the reasons discussed below, the Board of Indian Appeals vacates the rescission and remands this matter to the Area Director for further consideration.

Appellant and Bruce each owned an undivided interest in Turtle Mountain Allotment No. 304-1935-E. On May 17, 1993, Bruce applied to the Turtle Mountain Agency, BIA, to gift deed her interest in the allotment to Appellant. The application was approved by the Superintendent, Turtle Mountain Agency. Although the approval itself is dated April 17, 1993, other documents in the administrative record indicate that the gift deed was approved on May 17, 1993. Bruce did not appeal the approval of the gift deed.

On September 16, 1998, the Chief Judge of the Turtle Mountain Tribal Court issued an order granting summary judgment to Bruce against Appellant in connection with the gift deed. The Judge found that Appellant had not paid Bruce the \$1.00 which was recited as consideration for the gift deed. He ordered the Superintendent to "rescind the land transfer and conveyance * * * and restore [Bruce] as the legal owner." The tribal court order indicates that records regarding Bruce's trust real estate holdings were before the court through a subpoena duces tecum issued to the Superintendent. However, the scant materials which comprise the administrative record do not indicate whether the United States was a party in the tribal court proceedings.

The Superintendent forwarded the tribal court order and case file to the Area Director on September 17, 1998.

In a September 24, 1998, memorandum to the Superintendent, the Area Director held that approval of the gift deed violated 25 C.F.R. § 152.25(d). Section 152.25(d) provides:

With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

In the September 24, 1998, memorandum, the Area Director stated that the record failed to show that Appellant was "a lineal descendent [of Bruce], or [that] a special relationship exists justifying approval of the gift transaction;" that "[a]ccording to our regulations, [Appellant] is ineligible to receive land, by gift, from [Bruce];" and that rescission of the gift deed did "not require an order from the Turtle Mountain Tribal Court System." The Area Director instructed the Superintendent to submit the original deed to the Area Office, with a request that it be rescinded for failure to meet the requirements of 25 C.F.R.

The Superintendent complied with the Area Director's instructions on October 6, 1998.

The Area Director rescinded the gift deed on October 14, 1998, and sent a copy of the rescission to the Superintendent on October 20, 1998. It appears from the administrative record, however, that Appellant was not notified of this action until June 9, 1999, when the Area Director issued the letter which is the subject of this appeal. Appellant timely appealed from the June 9, 1999, letter.

The Board finds that this rescission must be vacated for reasons not raised by Appellant. It takes this action under its authority in 43 C.F.R. § 4.318 to exercise the inherent authority of the Secretary of the Interior to correct manifest error or injustice.

The Board has on several occasions considered the issue of the rescission of gift deeds. See, e.g., Estate of George Dragswolf, Jr., 30 IBIA 188, modified, 31 IBIA 228 (1997); Estate of Clifford Celestine v. Acting Portland Area Director, 26 IBIA 220 (1994) and 29 IBIA 269 (1996); Escalanti v. Acting Phoenix Area Director, 17 IBIA 290 (1989). All of these cases were decided well before the Area Director's rescission of the gift deed at issue here. However, neither the rescission itself nor the Area Director's decision shows any consideration of the issues discussed in those cases, including, but not limited to, the question of whether or not the Department has the authority to rescind a gift deed.

Assuming arguendo that the Department has authority to rescind the gift deed, the Area Director based her decision on a determination that there was no special relationship between

Appellant and Bruce. However, the administrative record is totally devoid of evidence that the Area Director made any inquiry into the nature of the relationship between the two women or their reasons for entering into the gift deed.

Furthermore, to the extent that the Area Director's action here was motivated by the existence of the tribal court order, there is no evidence that the Area Director considered the effect, if any, of the Board's decision in Camel v. Assistant Portland Area Director, 21 IBIA 179 (1992). See also, e.g., United States v. Yakima Tribal Court, 794 F.2d 1402 (9th Cir. 1986), cert. denied, 481 U.S. 1069 (1987).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Aberdeen Area Director's October 14, 1998, rescission of this gift deed and June 9, 1999, letter informing Appellant of that rescission are vacated and this matter is remanded to the Area Director for further consideration in accordance with this order. The Board strongly suggests that the Area Director seek assistance from the Office of the Solicitor in addressing this matter on remand.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge